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8 *Attorneys for Plaintiffs*
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

12 JUAN FLORES-MENDEZ, an individual and
13 TRACEY GREENAMYER, an individual,
and on behalf of classes of similarly situated
individuals.

Case No.: 3:20-cv-04929-WHA

**DECLARATION OF PATRICK A.
BARTHLE II IN SUPPORT OF
PLAINTIFFS' MOTION TO STRIKE
UNTIMELY DISCLOSED EVIDENCE
AND WITNESSES**

15 || Plaintiffs,

17 || ZOOSK, INC., a Delaware corporation.

Defendant

1 **Additional Counsel for Plaintiffs and the Putative Class:**

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DECLARATION OF PATRICK A. BARTHLE II

I, Patrick A. Barthle II, hereby declare as follows:

1. I am an attorney at Morgan & Morgan. I am counsel for Juan Flores Mendez and Tracy Greenamyer.

2. I am thoroughly familiar with, and have personal knowledge of, all of the facts set forth herein. If called as a witness, I could and would competently testify to the information set forth below.

3. I have prepared this Declaration in Support of Plaintiffs' Motion to Strike Untimely Disclosed Evidence and Witnesses, which is filed contemporaneously herewith.

9 4. Attached hereto as Exhibit 8 is a true and correct copy of an email string between
10 myself and counsel for defendant Zoosk Inc. (“Zoosk”).

11 5. Attached hereto as Exhibit 12 is a true and correct copy of Plaintiffs' Notice of
12 Deposition Pursuant to Rule 30(b)(6).

13 I declare under penalty of perjury under the laws of the United States of America that the
14 foregoing is true and correct. Executed June 24, 2022 in Tampa, Florida.

/s/ *Patrick A. Barthle II*

Patrick A. Barthle II

EXHIBIT 8

Patrick Barthle x2219

From: LaBrie, Matthew <mlabrie@orrick.com>
Sent: Tuesday, June 7, 2022 8:51 PM
To: Kiley Grombacher
Cc: Ryan McGee x3030; lking@bradleygrombacher.com; John Yanchunis x2191; Jennifer Cabezas x3120; Patrick Barthle x2219; Ryan McGee x3030; Suzette Boucher; Harlow, Rebecca; Meal, Doug; Kessler, Lauren
Subject: *EXT* RE: Flores-Mendez v. Zoosk - Defendant's expert reports

CAUTION: Use caution when clicking on links or opening attachments in this external email.

Kiley,

The document you reference (Bates stamped ZOOSK00002773) is a document that was requested and relied on by Zoosk's expert, Mr. Ellman, in order for him to form his opinion. Therefore, pursuant FRCP 26(a)(2)(B)(ii) we disclosed the document as a document relied on by Mr. Ellman and produced the document simultaneously with our service of Mr. Ellman's report.

Regards,
Matthew

Matthew D. LaBrie
Senior Associate

Orrick
Boston 
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M +1-603-254-8504
mlabrie@orrick.com



From: Kiley Grombacher <kgrombacher@bradleygrombacher.com>
Sent: Monday, June 6, 2022 12:52 PM
T
Subject: RE: Flores-Mendez v. Zoosk - Defendant's expert reports

Counsel

Can you please forward the date of production and production cover letter for ZOOSK00002773?

Thanks

Kiley

Kiley Grombacher
Bradley/Grombacher LLP

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From: lkessler@orrick.com <files@orrick.com>
Sent: Wednesday, June 1, 2022 8:14 PM
To: JYanchunis@forthepeople.com; JCabezas@ForThePeople.com; pbarthle@forthepeople.com; rmcgee@forthepeople.com; Suzette Boucher <SBoucher@bradleygrombacher.com>; Lirit King <lking@bradleygrombacher.com>; Kiley Grombacher <kgrombacher@bradleygrombacher.com>; zach@crosnerlegal.com; mike@crosnerlegal.com
Subject: Flores-Mendez v. Zoosk - Defendant's expert reports

Counsel:

Attached please find Defendant Zoosk, Inc.'s expert reports.

Best,
Lauren

Files attached to this message

Filename	Size	Checksum (SHA256)
Expert Report of Brian Ellman Confidential.zip	57.3 MB	1dc1ceec34432c7047d64a7d20ed9398e3d4e1fa1ec3593c21719c8acde8fa28
2022.06.01 Expert Report of Chris Cronin - Confidential.pdf	431 KB	02f3b2e7635c77694f982e1b6878685a9bc5b5563c52237098d05db8b3183a1e
2022.06.01 Expert Report of Mahmoud El Halabi - Confidential.pdf	1.47 MB	83ea96bb2eeab1e44350b1418cd8affc3f79db429f70eb61b2deb92fc658209f
2022.06.01 Proof of Electronic Service.pdf	99 KB	3dadaef470ea53aa908fb0a27199c00c23b44bee8d583d9bb18ef1684eebb4dc5
2022.06.01 Expert Report of Bret Padres - Confidential.pdf	409 KB	de5a05ee01bf922dc93a740a9a91476e7e995316d19220e26d0f72f68b7ec884

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EXHIBIT 12

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12 Attorneys for Plaintiff

13 (Additional counsel listed on following page)

14 **UNITED STATES DISTRICT COURT**
15 **NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION**

16 JUAN FLORES-MENDEZ, an individual and
17 AMBER COLLINS, an individual, and on
18 behalf of classes of similarly situated
19 individuals,

20 Plaintiffs,

21 v.

22 ZOOSK, INC., a Delaware corporation; and
23 SPARK NETWORKS SE, a German
24 corporation,

25 Defendants.

26 **CASE NO: 4:20-cv-04929-WHA**
27 Assigned to Hon. William H. Alsup, CR 12

28 **PLAINTIFFS' NOTICE OF DEPOSITION**
 PURSUANT TO RULE 30(b)(6)



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20 rmcghee@forthepeople.com

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to Rule 26 and 30(b)(6) of the Federal Rules of Civil Procedure, Plaintiffs, through their counsel, will take the deposition of Zoosk, Inc.'s designated corporate representative upon oral examination before a court reporter or other person authorized to administer an oath at the offices of Orrick, 51 West 52nd Street, New York, New York 10019-6142 or at such other location as the Parties mutually agree, commencing at 9:00 am on October 12, 2021.

Pursuant to Federal Rule of Civil Procedure 30(b)(6), Zoosk, Inc. shall designate and produce for deposition one or more of its officers, directors or managing agents, or other persons consenting to appear and testify on its behalf concerning the subject matters listed in the attached Schedule A.

Rule 30(b)(6) states: "The persons designated must testify about information known or reasonably available to the organization." If Zoosk, Inc. intends to designate multiple persons who will testify, please "set out matters on which each person designated will testify." *See Fed. R. Civ. P.* 30(b)(6). The deposition will be recorded by video and stenographic means.

DATED: October 5, 2021 Respectfully,

/s/ John A. Yanchunis
John A. Yanchunis (*Pro Hac Vice*)
jyanchunis@ForThePeople.com
MORGAN & MORGAN
COMPLEX LITIGATION GROUP
201 N. Franklin Street, 7th Floor
Tampa, Florida 33602
T: 813-223-5505
F: 813-223-5402 (fax)

CERTIFICATE OF SERVICE

I hereby certify that on October 5, 2021, caused the forgoing document to be transmitted by electronic means to counsel of record.

Executed on October 5, 2021

/s/ John A. Yanchunis
John A. Yanchunis

EXHIBIT A
DEFINITIONS

The following definitions shall apply to each of the Areas of Inquiry listed below and are deemed to be incorporated in each such Area:

1. “The Breach” means the unauthorized access to PII obtained through exploitation of the vulnerability or vulnerabilities which is the subject of the amended complaint filed in this case.
2. “Communicate” or “communication” shall mean and include every manner or means of disclosure, transfer or exchange of information (in the form of facts, ideas, inquiries or otherwise) whether orally or by document or whether face-to-face, by telephone, telecopier, mail, facsimile, personal delivery, overnight delivery or otherwise.
3. “Compromise” means gaining access to, acquiring, copying, transmitting, obtaining, taking, stealing, examining, seeing, viewing, or using information or data without permission, approval, or authorization.
4. “Computer System” includes any server (whether physical, web-based, virtual, or otherwise), desktop computer, laptop computer, tablet, mobile phone, networking equipment, backup storage, internet site, intranet site, and the software, programs, applications, scripts, operating systems, or databases used to control, access, store, add, delete, or modify any data or information (including but not limited to PII) stored on any of the foregoing non-exclusive list.
5. “Correspondence” shall include any written letter, memo or note which was delivered, mailed, transmitted by fax machine, E-mail or other communication system.
6. “Employee” includes, without limitation, any current or former officer, director, executive, manager, secretary, staff member, messenger, agent, independent contractor, and/or other person who is or was employed by Defendant or who provided services to Defendant under an independent contractor arrangement.
7. “Person” or “persons” means any natural person, business, proprietorship, public or private corporation, company, firm, government or governmental partnership, trust, joint venture, entity (including any government agency board, authority, commission or political subdivision or department thereof) or any other form of business or legal entity, organization, or association.
8. “PII” (Personal Identifying Information) is information, in electronic or physical form, that can be used on its own or with other information to identify a single person, including but not limited to a person’s name, address, electronic mail address, telephone number, social security number, information about a person’s banking or other type of account, credit-card information, date and place of birth, mother’s maiden name, location data, devices used to access Computer Systems, and biometric records. PII also includes (1) identifiers such as any unique personal identifier or IP address; (2) electronic network activity information, including, browser histories, search history, and any information regarding a consumer’s interaction with a Web site, application or advertisement; (3) audio, electronic, visual, thermal, and olfactory information; (4) geolocation data; and any inferences drawn from various data elements of PII to create a profile about a consumer reflecting the consumer’s preference, characteristics, psychological trends, preferences, predispositions, behavior, attitudes, intelligence, abilities and aptitudes.

1 9. "Plaintiffs" means the Plaintiffs identified in the amended complaint filed in this case.

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AREAS OF INQUIRY

1. How the hacking group ShinyHunters perpetuated the Breach, exfiltrated consumers' PII, and when the Breach occurred, including but not limited to the investigations and analyses that led to those determinations, when those determinations were made, and who made those determinations;
2. When and how You discovered the Breach;
3. The nature and extent of the PII, information, or data that was compromised in the Breach, the period of time during which the compromise occurred, the number of users or consumers affected by the Breach, the investigations and analyses that led to those determinations, when those determinations were made, and the persons involved in making those determinations;
4. The measures You or others on Your behalf have taken from January 1, 2019 to July 22, 2020 to ensure the security of PII, including: the use of firewalls, encryption, and other industry-standard techniques to segment PII from the remainder of Your computer networks and/or computer systems (including any cloud infrastructure); the implementation of protocols that encrypt or otherwise protect PII from unauthorized disclosure; and remedying any potential vulnerabilities in Your computer networks and/or computer systems (including any cloud infrastructure), code, or other electronic devices, storage devices, and software to prevent data breaches or data disclosures.
5. The information-security related measures You or others on Your behalf have been advised to take in response to the Breach with respect to Your computer networks and/or computer systems (including any cloud infrastructure), or Your other electronic devices, storage devices, and software.
6. The information-security related measures You or others on Your behalf have taken in response to the Breach with respect to Your computer networks and/or computer systems (including any cloud infrastructure), or Your other electronic devices, storage devices, and software, including those measures which you plan to take and the schedule for the implantation or completion of those measures.

Dated: October 5, 2021

**BRADLEY/GROMBACHER LLP
CROSNER LEGAL P.C.
MORGAN & MORGAN COMPLEX
LITIGATION GROUP**

By: /s/ John A. Yanchunis
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John A. Yanchunis
Ryan J. McGee

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2 Attorneys for Plaintiffs and
3 the proposed Class
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